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HOUSE OF JUDGMENT: ALTERNATE DISPUTE RESOLUTION IN THE ORTHODOX JEWISH COMMUNITY

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INTRODUCTION

In recent years, lawyers have become increasingly interested in exploring alternative methods of resolving disputes outside of the civil court system. The primary motivation behind this interest is the litigants' desire to reduce litigation costs and to speed up the process of obtaining relief. Litigants must often wait years before their case is heard by a judge or jury. By litigating in a forum outside the civil court system, litigants can drastically reduce this waiting period to a few months and reduce the increasingly burdensome costs of litigation, as well.

Convenience is another reason why many attorneys prefer to use alternative methods of dispute resolution. Rather than appearing periodically for trial call and waiting to be told at a moment's notice that a courtroom has become available, the parties can fix a date to have their case heard when using alternative methods of dispute resolution. This certainty helps attorneys coordinate the appearance of lay and expert witnesses, who often have busy schedules, because the attorneys can provide their witnesses with a specific time when they will be called.

Many medical malpractice cases are presently decided by binding arbitration panels rather than through the traditional courtroom methods. Increasing numbers of managed care contracts mandate the use of such alternative methods of dispute resolution. In such cases, a panel of three retired judges may be used in lieu of having the case decided by a jury.¹

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1. For example, the Judicial Arbitration and Mediation Service (JAMS) frequently provides lawyers and retired judges to hear such cases.

Business contracts are increasingly including provisions mandating the use of alternative dispute resolution instead of litigation. These provisions not only allow the parties to reduce the costs of litigation and the time it would take to get to trial, but the provisions can also discourage unscrupulous business practices in which one party takes advantage of the other by strategically delaying the litigation process.

The Bet Din, a Hebrew term that means "house of judgment," is one form of alternate dispute resolution that allows Jews to resolve disputes between themselves in a private forum using a panel of three rabbis, or occasionally, by using a single rabbi. As an institution, the Bet Din began thousands of years ago, and certain Jewish groups throughout the world have continued to use it in various forms with various frequency.

Presently, in the United States, the Bet Din usually consists of a panel of three judges.² In all sects of Judaism, the Bet Din has jurisdiction over religious matters, such as divorce or conversions. In the Orthodox Jewish community, however, the Bet Din is also used as a method of resolving other types of disputes, including complicated business disputes.³ The litigants must sign a contract agreeing to binding arbitration before the Battei Din⁴ will render a final judgment. The judgments of the Battei Din are binding, and they can be filed in civil court and enforced like any other judgment.

The Bet Din differs from other forms of alternate dispute resolution in two important respects. First, no statutes mandate the use of the Bet Din, and business contracts rarely include clauses mandating the use of the Bet Din. After a dispute arises, the parties voluntarily agree to be bound by the decision of the Bet Din in lieu of going to court. Thus, some force other than statutory or contractual obligation, such as social pressure or religious conviction, must motivate the parties to agree to use this method of dispute resolution.

Second, the Bet Din involves the use of the parties' cultural peers or members of their own ethnic group to decide the case. The implicit hope here is that the parties can have their case decided by individuals who hold cultural beliefs and values similar to their own. The extent to which the litigants believe that this has occurred may have a profound effect on whether or not the litigants are satisfied with the outcome of the process.

This article is confined to the use of the Bet Din by the Orthodox Jewish community of Los Angeles and San Diego, California. In this community there are several Battei Din: the "standing," or established panel of three judges organized under the auspices of the Rabbinic Council of California based in Los Angeles; a Bet Din used less often in San Diego primarily by members of the Chabad sect and organized by one or two leading rabbis in

2. See BERNARD J. MEISLIN, *JEWISH LAW IN AMERICAN TRIBUNALS* 123 (1976).

3. See *id.* at 123-24; ELLIOT N. DORFF & ARTHUR ROSETT, *A LIVING TREE: THE ROOTS AND GROWTH OF JEWISH LAW* 341 (1988) (noting that rabbis play a role in answering legal questions).

4. The plural of Bet Din.

the community on an as-needed basis; and several other Battei Din in the Los Angeles area that are less organized or are assembled by local rabbis whenever a Bet Din is needed.⁵ Part I of this article will describe two specific cases brought before a Bet Din. Part II will examine the expectations of Bet Din litigants and the reactions of the Bet Din participants.

I. DESCRIPTION OF THE CASES

A. *Dissolution of a Real Estate Partnership*

This case was litigated in San Diego before the Chabad Bet Din. It involved a dispute between two individuals who had both contributed to a real estate development and were disputing how the development's earnings should be divided.

Peter Newman⁶ brought this claim before the Bet Din. Mr. Newman is a successful real estate developer who regularly puts together real estate projects worth millions of dollars. Mr. Newman lived with his grandmother, who was an Orthodox Jew, until he was thirteen-years-old. He then went to live with his father, who Mr. Newman described as a "more liberal Orthodox."⁷ Mr. Newman is now married with two adult children.⁸

Mr. Newman wants to observe his religious tenets more closely. He does not eat pork or lobster because they are not kosher, but he does not keep a kosher home. He wants to make his home kosher, but he has not yet convinced his wife to agree to this. He wants to become strictly kosher because he wants to keep more of the traditions. He also feels badly that his daughter's family, who is fairly religious, must eat on paper plates when they visit him because since his dishes are not kosher.⁹

Mr. Newman tries to observe the Sabbath more strictly. He has set a goal for himself this year of keeping one Sabbath a month by not driving, by studying instead of working, and possibly by going to synagogue. Ultimately, he hopes to increase the number of Sabbaths per month that he observes.¹⁰

Mr. Newman moved to San Diego from Canada a number of years ago. He met Rabbi Goldstein of one of the Chabad synagogues in San Diego and started going to Rabbi Goldstein's synagogue.¹¹ Mr. Newman liked the syna-

5. Approximately 15 informants involved in six cases decided by a Bet Din were interviewed, including litigants, lawyers, and rabbis, who adjudicated the cases.

6. Interview with Peter Newman. To protect the anonymity of sources, pseudonyms for all of the Bet Din participants have been used, and references to the dates of the interviews have been omitted.

7. *Id.*

8. *See id.*

9. *See id.*

10. *See id.*

11. *See id.*

gogue because he felt that although the rabbis were fairly observant, they were very accepting of others, regardless of one's degree of religious commitment.¹² For instance, they did not mind if one drove to synagogue on the Sabbath, even though Jewish law forbids driving on that day.

Both Mr. Newman and the defendants regularly give money to Rabbi Goldstein's synagogue. However, the defendants belong to a Conservative Jewish congregation in San Diego, while Mr. Newman attends services at Rabbi Jacobson's synagogue.¹³

Mr. Newman met the defendants through Rabbi Goldstein. Mr. Newman had been looking for someone to help develop some of his land, and Rabbi Goldstein introduced him to some people from South Africa who were interested in a business venture.¹⁴ Mr. Newman took a liking to them and decided to enter a business deal with them. He let their attorney prepare the partnership papers. In retrospect, he felt this was a mistake because the contract did not properly protect his interests. However, Mr. Newman neglected to give the contract to his attorney for review.¹⁵

Had the project been successful, the partnership probably would have worked. However, the defendants charged certain expenses to the business that lead to a loss on paper, thus eliminating any reimbursements or profits that Mr. Newman may have received.¹⁶ Mr. Newman did not feel as though he was treated fairly, especially since the defendants had taken out over \$2.2 million in fees and expenses, yet still claimed a loss.¹⁷

Rabbi Jacobson, one of the rabbis who sat on the Bet Din during Peter Newman's case, also describes the case as a dispute between two partners involved in real estate development.¹⁸ Each partner was supposed to receive a certain percentage after the costs. Although the project generated revenue, there was no profit. Rabbi Jacobson felt that because the contractual terms were fairly clear, Mr. Newman had little chance of succeeding in a secular court.¹⁹

After realizing that his partners were not dealing fairly with him, Mr. Newman contacted his lawyer and filed a civil action. Mr. Newman also contacted Rabbi Goldstein, who offered to serve as a mediator. Rabbi Goldstein proposed a solution that Mr. Newman thought was fair, but the defendants would not accept the proposal.²⁰

Mr. Newman had three main reasons for agreeing to litigate his case before the Bet Din rather than continuing to use the secular court system:

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.*

18. *See* Interview with Rabbi Jacobson.

19. *See id.*

20. *See* Interview with Peter Newman.

Rabbi Goldstein persuaded him, he thought he would get a fair and moral disposition of the case (perhaps with a better result than in civil court), and he wanted expedited proceedings. Rabbi Goldstein convinced the parties to go to a Bet Din because he “didn’t want us to wash our dirty laundry in a public forum, as we were both associated with him.”²¹ Mr. Newman wanted to accommodate the rabbi’s feelings.²²

Mr. Newman’s attorney, who is not Jewish, researched the Bet Din and felt it was a reasonable option. Mr. Newman’s attorney felt he would have better success before a jury than before a judge. Although the letter of the contract was not violated, a jury could find that the intent and the spirit of the contract had been broken. Thus, he felt that he would have an advantage in a forum where the judges were more interested in a fair and just decision than in a strict legal interpretation. Moreover, a Bet Din would be less expensive and more expedient than a civil trial.²³

The Bet Din panel consisted of Rabbis Jacobson, Goldstein, and Chernofsky. Rabbis Jacobson and Goldstein are from San Diego and knew the parties fairly well. Rabbi Chernofsky is from New York and is an expert in the laws pertaining to the Bet Din. Whereas a rabbi’s basic training includes the study of laws, most of those laws are ritualistic rather than civil. For instance, Talmudic law learned in rabbinical school is of little practical benefit in deciding legal issues pertaining business disputes.²⁴

A rabbi who wants to learn Jewish law as it pertains to business matters may either go on to a school for diyanim, or judges, to earn the equivalent of a graduate degree or intern with another rabbi who is experienced in conducting Battei Din. There are very few schools for diyanim, and it could take as many as seven or eight years to earn a degree from one of these schools. Rabbi Chernofsky has such a degree and travels around the country hearing cases on Battei Din.²⁵

The Battei Din process is fairly informal. At the first coffee break, Rabbi Chernofsky told Mr. Newman that Mr. Newman had been “snookered.” Mr. Newman was very encouraged by this comment and felt that he would get what he deserved.²⁶

Mr. Newman later discovered that rabbis on a Bet Din, rather than deciding a case based strictly on Jewish law or equitable considerations, provide all relevant documents to attorneys who are familiar with American law. These attorneys provide their analysis of those documents to the rabbis. In Mr. Newman’s case, three different attorneys and a retired judge reviewed the documents and came to the same conclusion: according to the terms of the agreement, the defendants had not violated the contract. Thus, much to

21. Interview with Rabbi Jacobson.

22. *See* Interview with Peter Newman.

23. *See id.*

24. *See* Interview with Rabbi Jacobson.

25. *See id.*

26. *See* Interview with Peter Newman.

the surprise of Mr. Newman, the rabbis applied American law rather than Jewish law, and the fact that Mr. Newman had been "snookered" had no bearing on the decision. The rabbis awarded Mr. Newman only costs and legal fees, which the defendants paid out over eighteen months.²⁷

Mr. Newman was very disappointed with the judgment. However, he still maintains regular contact and a friendship with both Rabbi Jacobson and Rabbi Goldstein.²⁸ Both Mr. Newman and the defendants still attend religious services at the Chabad synagogue. Mr. Newman's adult son, with whom he regularly does business, is amicable toward the defendants; however, Mr. Newman is still bitter and unwilling to speak with them. Although he agrees with his son that he is partly to blame for the problem because he should have been more careful in drafting the contract, he still feels they did not act in good faith.²⁹

Mr. Newman is familiar with the civil court process and has previously litigated in that forum.³⁰ In comparing the bet din to civil court, Mr. Newman described it as a similar process in that evidence is introduced and considered and a judge can ask the attorneys questions. Both the judges in civil court and the rabbis conducting the bet din are often very well informed. He felt that the bet din was much less formal than the secular court. He described it as an arbitration that is supposed to be based on religious law.³¹

Mr. Newman emphatically believes he would have fared better if the Bet Din had been composed entirely of strangers. He felt that, since Rabbi Goldstein knew both parties, "in order to get off the hot box, he resorted to a legal opinion rather than a moral one."³² However, Mr. Newman acknowledged that Rabbi Goldstein was the only one who knew the parties well enough to assemble the Bet Din.³³

Still, Mr. Newman would use a Bet Din again, but only if he had a dispute with another Jewish person. Also, he would try to choose a more independent arena. In spite of his complaints about the experience, Mr. Newman believed in the purpose of the Bet Din and felt that the true traditional meaning was important: "to settle disputes by Jewish law and not expose our problems to the open community."³⁴

27. *See id.* Rabbi Goldstein took it upon himself to collect this money from the defendants and send it to Mr. Newman. *See id.*

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.*

32. *Id.*

33. *See id.*

34. *Id.*

B. Dissolution of a Software Business Partnership

This case was litigated before the Chabad Bet Din in San Diego. George Stein and Mr. Ginsberg formed a partnership to develop a computer software business. Mr. Stein had invested a substantial amount of money in the partnership. Mr. Stein became dissatisfied with the Mr. Ginsberg's lack of productivity and decided to dissolve the partnership.³⁵

George Stein grew up in the deep South in a home that was Jewish but not religious. He has been a member of Rabbi Jacobson's Chabad congregation for about ten or twelve years and considers himself to be an observant Jew.³⁶ Mr. Stein is a graduate of Yale law school and is a licensed attorney. He has tried cases in civil court, but his main area of specialization is corporate finance.³⁷

George Williams, who represented Mr. Stein before the Bet Din, is not Jewish. He described himself as a "non-practicing Christian."³⁸ He is also a graduate of Yale law school who knew Mr. Stein from college. The two have been friends for thirty years. Mr. Williams has tried cases in civil court and had one other case that tangentially involved a Bet Din.³⁹ In that case, he represented a client in a suit arising out of a divorce. The issue was whether a prior decision of a Bet Din in New York was binding in a civil court in California.⁴⁰ Although he did not represent his client at the previous Bet Din, he did research legal issues pertaining to its enforcement.⁴¹

George Miller, who represented Mr. Ginsberg, described himself as Jewish but "extremely reform." He was not affiliated with the Chabad synagogue but felt close to some of their leaders because they had helped friends of his in a manner he described as "lifesaving." Mr. Miller thus helped the synagogue leaders occasionally by providing legal advice. Rabbi Goldstein called Mr. Miller and asked him to represent "the tougher side" as a favor to the rabbi, and Mr. Miller agreed.⁴²

Mr. Stein decided to litigate before a Bet Din because two observant Jews are required under Jewish law to have their disputes resolved before a Jewish tribunal. Except for this requirement, which he felt morally bound to abide by, he would have taken the case to civil court.⁴³ Following the requirements of Jewish law with regard to this issue was so important to Mr. Stein that his partnership contract with Mr. Ginsberg specified that all dis-

35. See Interview with George Stein.

36. See *id.*

37. See *id.*

38. Interview with George Williams.

39. See *id.*

40. See *id.*

41. See *id.*

42. See Interview with George Miller.

43. See Interview with George Stein.

putes arising under the contract would be decided before a Bet Din.⁴⁴

Mr. Miller and Mr. Williams confirmed that the partners' contract obligated the parties to settle their contractual disputes before a Bet Din. Mr. Williams felt that there were secondary benefits to using a Bet Din, which were similar to the reasons why one would use arbitration rather than go through court.⁴⁵ He felt it would be faster and more economical to allow the parties to maintain some privacy and avoid airing "their dirty laundry in public."⁴⁶ Moreover, another potential client of Mr. Stein's might have been hurt had the dispute been made public.⁴⁷

Mr. Williams was not consulted about whether or not it was in his client's best interest to have the case heard before a Bet Din rather than in civil court. However, as an attorney, he agreed with the decision. He felt there was a benefit where the litigants know the rabbis deciding the case because the rabbis could more easily discern the parties' credibility. Mr. Williams also felt that the parties would be more inclined to settle because the rabbis would help them reach a compromise.⁴⁸

Mr. Stein had originally wanted to use the Rabbinic Council of California's Bet Din in Los Angeles because he thought they would be more knowledgeable about the law. He was also concerned because he was a large contributor to the Chabad congregation in San Diego and thought it would be difficult for them to hear his case. Mr. Ginsberg was also a member of the Chabad congregation but was not a large financial contributor. Ultimately, Mr. Stein felt his status as a contributor worked against him because the rabbis went to greater lengths than necessary to be fair to Mr. Ginsberg.⁴⁹

Rabbi Jacobson convinced Mr. Stein to use the local Bet Din, telling him that it was closer and more convenient. Furthermore, Mr. Ginsberg wanted to use the local Bet Din. In retrospect, Mr. Stein felt that it was *bashert*⁵⁰ that he picked the San Diego Bet Din and that they rendered the decision they did.⁵¹

Both Mr. Ginsberg, who was an Israeli, and Mr. Stein were members of the Chabad congregation. Under the terms of the partnership agreement, Mr. Stein would invest approximately one million dollars, and Mr. Ginsberg would develop the product. After a substantial period of time, Mr. Stein noticed that Mr. Ginsberg was not producing anything. Mr. Stein finally demanded the dissolution of the partnership and the return of some of his investment. Mr. Ginsberg claimed he was still working on the product and

44. *See id.*

45. *See* Interview with George Williams.

46. *Id.*

47. *See id.*

48. *See id.*

49. *See* Interview with George Stein.

50. *Bashert* means fate or destiny.

51. *See* Interview with George Stein.

needed more time. He refused to return any of Mr. Stein's investment.⁵²

The case was litigated before a Bet Din composed of Rabbis Jacobson and Goldstein, the two Chabad rabbis from San Diego, and Rabbi Chernofsky, an expert from New York. According to Rabbi Jacobson, it became clear to them that Mr. Ginsberg was at fault, and they ruled in favor of Mr. Stein, awarding him \$60,000.⁵³

Both attorneys described the Bet Din process as fairly informal. Coffee and cake was served in the room where the case was heard. Throughout the proceedings, an effort was made to get both parties to come to an agreement. Only after it became clear that the two sides had irreconcilable differences did the rabbis render a verdict.⁵⁴

The rabbis asked both sides to tell the facts and assumed they would be truthful. Mr. Williams said that although they might tell related facts according to their own perspective, he thought the parties would be less likely to intentionally lie before a Bet Din than in a civil court. Unlike the parties in a civil proceeding, the parties involved in a Bet Din regularly see each other and therefore would be more likely to be truthful.⁵⁵

The rabbis heard testimony from both parties and then tried to talk to each party outside the presence of the other. The rabbis tried hard to understand each party's position and to enable each party to understand the other's position. Although the case was complicated and technical, the rabbis eventually were able to resolve the issues.⁵⁶

According to Mr. Williams, Rabbi Chernofsky seemed to be more knowledgeable and experienced at trying cases.⁵⁷ The rabbis were very courteous, and the fact that Mr. Williams was not Jewish did not seem to make a difference in how they treated him. He felt that they were more concerned with the quality of his representation than with his religious orientation. Occasionally, Rabbi Goldstein would lapse into speaking Hebrew for "psychological reasons," and Rabbi Chernofsky would translate for Mr. Williams.⁵⁸

The Bet Din process was designed to perform a different function than the secular courts because the Bet Din functions with respect to a limited class of people with their own value structure, whereas secular courts must deal with a diverse mixture of people and issues.

In comparing the Bet Din to the Judicial Arbitration and Mediation Service (JAMS), Mr. Williams had more faith in the impartiality and fairness of the Bet Din than in JAMS. He felt that because JAMS is in the business of hearing cases, attorneys who often brought cases to JAMS could get preferential treatment. Conversely, the Bet Din is not in the business of making

52. *See id.*

53. *See* Interview with Rabbi Jacobson.

54. *See* Interview with George Miller; *see also* interview with George Williams.

55. *See* Interview with George Williams.

56. *See id.*

57. *See id.*

58. *See id.*

money from settling disputes and is indifferent as to whether a party brings them cases in the future.⁵⁹

Mr. Miller also described the Bet Din as a “quasi-mediation” process that was quite informal. The opposing counsel presented briefs and written summaries of the claims, but he did not think that that made much of a difference in the rabbis’ decision. He did not hear anyone talk about Jewish law. Rather, they seemed to apply “common sense, with a sprinkling of contract.”⁶⁰ He described the rabbis as “more worldly and intelligent than one would imagine and less forgiving.”⁶¹ Mr. Miller found the rabbis to be impartial.⁶²

The Bet Din process was very informal. The participants sat around a table and discussed the issues. No witnesses were called, and the documents were merely handed to them and read without the formal procedure for laying a foundation for the introduction of evidence required in civil court.⁶³

Prior to rendering the verdict, the Bet Din ordered Mr. Ginsberg to complete various work in furtherance of the goals of the corporation. Many months later, when he failed to perform the work, the rabbis ruled against him and in favor of Mr. Stein. Both lawyers considered this an attempt to mediate between the parties to see if there was any way that the partnership could be salvaged or realize part of its original goals. Only after it became clear that Mr. Ginsberg would not perform the work did the rabbis rule against him.⁶⁴

Mr. Ginsberg was very angry with the verdict and refused to pay. Some time later, he moved back to Israel. After Mr. Stein attempted to collect the judgment, Rabbi Jacobson wrote him a letter asking him to leave Mr. Ginsberg alone. Rabbi Jacobson felt that Mr. Ginsberg had a family to support and did not have much money. Thus, Rabbi Jacobson tried to encourage Mr. Stein to be compassionate and refrain from enforcing the judgment. If Mr. Ginsberg made money in the future, Rabbi Jacobson would consider reconvening the Bet Din.⁶⁵

Mr. Stein was very unhappy with the Bet Din’s decision.⁶⁶ He felt that it would be beneficial for the rabbis to know the litigants only if one had a losing case because one could ask for *rachmanes*;⁶⁷ otherwise, it was not helpful for the rabbis to know the parties. Mr. Stein was angry at the process and the decision. He felt that it was a waste of time. “I didn’t need to spend \$30,000

59. *See id.*

60. Interview with George Miller.

61. *Id.*

62. *See id.*

63. *See id.*

64. *See* Interview with George Miller; *see also* interview with George Williams.

65. *See* Interview with Rabbi Jacobson.

66. *See* Interview with George Stein.

67. *Rachmanes* is loosely translated as charity.

to \$40,000 for that.”⁶⁸

Mr. Stein thought that although the case was worth \$700,000 to \$800,000 in damages, the rabbis did not want to render such a large judgment against the defendant because they did not feel that he could pay it. Therefore, they awarded Mr. Stein \$60,000 for damages incurred while the case was pending.⁶⁹

Mr. Williams did not think the case would have been decided much differently in civil court. He felt that his client probably would not have fared any worse in another forum, and putting two Orthodox Jews in front of a jury in San Diego may have posed its own problems: “If you have someone who is part of a narrow class of people, it’s good if you can eliminate that element by taking it in front of similar type people. This makes their differences a non-issue.”⁷⁰

Mr. Williams described the process as a “tribal thing, more like going to village elders.”⁷¹ The parties knew that they would have to face each other again, and rabbis attempted to help the parties reconcile and resolve their disputes amicably rather than declare a winner and a loser, as is the goal in civil court. The rabbis seemed to be looking for a common ground to mediate the dispute, and they issued a ruling only as a last resort.⁷²

Mr. Miller described the process as “other worldly” because they all sat around a table chatting and serving food, without much structure. He had to resist the temptation to act more aggressively, as would have been appropriate in civil court.⁷³ Mr. Williams found the rabbis to be fair, intelligent, reasonable people.⁷⁴ Although Mr. Stein was not happy with the verdict, he did not feel the rabbis could have done much better because the business was inevitably falling apart, and the parties were unable to resolve their differences amicably.⁷⁵ Mr. Williams would recommend a Bet Din to other clients only for certain types of cases, such as where equity was on their side but the law was technically against them.⁷⁶

In contrast to the lawyer’s favorable impressions of the Bet Din, Mr. Stein had a different opinion as a litigant. He was deeply unhappy with the entire process and with the decision they rendered.⁷⁷ Although he personally liked the rabbis and considered them to be good friends, he felt they were “a two on a scale of one to ten for professionalism.”⁷⁸ There were too many

68. Interview with George Stein.

69. *See id.*

70. Interview with George Williams.

71. *Id.*

72. *See id.*

73. *See* Interview with George Miller.

74. *See* Interview with George Williams.

75. *See* Interview with George Stein.

76. *See* Interview with George Williams.

77. *See* Interview with George Stein.

78. *Id.*

complex issues to decide, and they were not competent enough to understand the facts of the case. Except for Rabbi Chernofsky, they did not have experience sitting on a Bet Din and were not experienced enough to sit as judges. Mr. Stein would use a Bet Din again, but he would be careful to select a Bet Din with more experienced rabbis.⁷⁹ Mr. Stein felt, however, that the rabbis tried to have compassion and do the right thing: "the spirit of God is supposed to come through it, and they may have done the right thing."⁸⁰

II. ANALYSIS OF THE LITIGANTS' REACTIONS TO AND FEELINGS ABOUT THE BET DIN

A. *Misplaced Expectations and Resolution of Contradictory Cultural Models*

The vast majority of respondents were extremely dissatisfied with the Bet Din process, including those who ostensibly won their cases. All of the litigants voiced similar complaints about the lack of experience or competence of the Bet Din that decided their case, and yet all felt that a different Bet Din would have done a better job. Thus, although they were unhappy with some aspect of their case, they continued to believe in the system as a whole.

The vast majority of litigants also felt that the rabbis who heard their cases tried to be fair and to render a just and moral decision. Several litigants felt that the rabbis had bent over backwards to favor the underdog or to see that justice was served. Most litigants felt the decisions were in some way divinely inspired or were somehow meant to be. However, they still felt that a different Bet Din would have somehow decided their cases differently.

In contrast to the litigants, all of the lawyers who represented clients before the Battei Din felt that it was a good forum in which to decide the cases. They felt the rabbis were intelligent and fair, and they felt that the decisions were reasonable. Several lawyers felt the rabbis were more "worldly" than one would expect. The lawyers were impressed with the rabbis' efforts to be fair and impartial.

One lawyer who had slight reservations about the Bet Din was himself an Orthodox Jew. Although he felt the rabbis did not chastise the opposing party for perpetrating what he considered to be fraudulent claims, he felt that, in the end, the rabbis had made every effort to be fair and to render a decision that was not influenced by ulterior motives.

The most common complaint voiced by the litigants was that the rabbis were not competent to decide the complicated legal or technical issues before them. Mr. Stein, who has appeared in civil court several times, felt his case was too complicated for the rabbis to understand. However, he felt the rabbis who sat on the Bet Din of the Rabbinic Council of California in Los

79. *See id.*

80. *Id.*

Angeles were bright and knowledgeable and that he would have gotten a more favorable verdict from them.⁸¹

Mr. Stein's lawyer viewed the case differently. Although the lawyer agreed that the case required a great understanding of technology and may have been a bit complicated for the rabbis, he felt that "in this case, [Mr. Stein] didn't do any worse than he would have in any other place. It was as good a verdict as he would have gotten."⁸²

In contrast to Mr. Stein, Mr. Newman, whose case was heard by the same Bet Din who heard Mr. Stein's case, was upset that the rabbis strictly applied the law and did not reach a moral or equitable result. Although Mr. Newman realized that, in a court of law, he would have lost based on the language of the contract, he felt that the rabbis should have looked beyond the contract and decided the case on a moral basis, looking to the intent and spirit of the contract. Instead, they issued a decision based on a strict interpretation of the law.⁸³

Another litigant whose case was decided by the Rabbinic Council of California Bet Din in Los Angeles also felt the Bet Din was not competent to decide his case. His case was quite complex, and he felt the rabbis did not understand enough of the facts to render a decision. Furthermore, he felt they made mistakes in evaluating the evidence. Ironically, while Mr. Stein felt that the Rabbinic Council of California Bet Din in Los Angeles was more knowledgeable and would have better understood his case, litigants before that tribunal similarly complained about the competence of that tribunal's rabbis.

Another litigant whose case was decided by a different Bet Din in Los Angeles had similar complaints about the Bet Din that decided his case. He felt that they were not knowledgeable about the law and did not give a rational explanation for their decision. He was so dissatisfied with the process that he wrote a six-page letter to someone who is considering going to a Bet Din, detailing the facts of his case and containing his advice. He complained that the decisions were arbitrary and that the rabbis did not seem to fully consider the facts of the case. Rather, he implies that the rabbis applied equity, often splitting the decision between what the two sides were asking for. Furthermore, he was quite upset that they did not give a written decision explaining the basis for the judgment.

The other complaint voiced by all of the litigants was that the rabbis who sat on the Bet Din knew the litigants too well to render an impartial decision. Both of the litigants whose cases were heard by the Chabad Bet Din in San Diego were regular members of the Chabad congregation and had given money to the synagogue prior to having their cases heard. Mr. Newman felt it was a major factor in the outcome of the decision.⁸⁴ Mr. Stein also

81. *See id.*

82. Interview with George Williams.

83. *See* Interview with Peter Newman.

84. *See* Interview with Peter Newman.

felt that the fact that the rabbis personally knew both of the parties affected the rabbis' decision.⁸⁵

One litigant went before a Bet Din that included the rabbi of the litigant's synagogue, and the litigant served as the synagogue treasurer. The litigant felt that, because the rabbi knew him, the rabbi may have bent over backwards to favor the opposing party. As a result, the litigant felt that the rabbi's personal relationship with him affected the rabbi's ability to render an impartial decision. Another litigant also mentioned that several of the rabbis who sat on his Bet Din had personal dealings with the litigants. He felt that this personal relationship put pressure on him to have his case heard before that Bet Din rather than go elsewhere. Thus, he did not feel free to choose a Bet Din with which he may have felt more comfortable.

All of the litigants voiced some disappointment with their Bet Din's failure to chastise or sanction the opposing party opponent for what they perceived to be immoral or unethical behavior. One litigant was quite upset that, despite the fact that the opposing party had threatened him and his family and allegedly started a small fire at his home, the rabbis of his Bet Din did not admonish or sanction that party. He was upset that they "let the guy feel no consequences to threatening a person's family. They were strictly going by who owes who money. I ended up buying a .357 magnum."⁸⁶

Others involved in the Bet Din echoed similar sentiments. One lawyer complained that the rabbis failed to impose sanctions against the opposing party for making blatantly fraudulent claims. At one point in the trial, he discovered that the opposing party was presenting false and scandalous material to the Bet Din. When he complained to the rabbi hearing the case, the rabbi simply told him that it would not affect their decision. The lawyer felt that, had he been in federal court, the court would have imposed sanctions on the opposing party.

The overwhelming majority of the litigants would use the Bet Din again to resolve their disputes with other Jews, in spite of the fact that they were deeply unhappy with the process, but they would use a different Bet Din. This response was common among those who felt a religious obligation to use the Bet Din and among those who were less religious. Mr. Stein would go to the Rabbinic Council of California Bet Din in Los Angeles in the future because he felt they were more knowledgeable and competent.⁸⁷ Mr. Newman would use a Bet Din in the future where the rabbis did not personally know the litigants.⁸⁸ One litigant, who used the Rabbinic Council's Bet Din, and another litigant, who used a different Bet Din in the Los Angeles area, would go to a Bet Din outside of California, probably in New York. They did not feel there was a Bet Din in Los Angeles knowledgeable enough

85. See Interview with George Stein.

86. Interview with informant, Jan. 22, 1996.

87. See *id.*

88. See Interview with Peter Newman.

or competent to hear cases. Thus, although all of the litigants were deeply unhappy with their own experiences before the Bet Din, they continued to believe in the system and to believe that their own experience was an aberration.

B. Analysis of the Bet Din

In an analysis of the cause of the litigants' dissatisfaction with their Bet Din experience, one must first consider their overt complaints before entertaining alternative explanations. The most common complaint was that the Bet Din was not competent to understand the complexities of the cases. This complaint can be refuted based on the contradictions between the litigants and their attorneys, and the lack of connection between the complaints and the outcome of the cases. The second most common complaint was that the rabbis who decided the cases knew the litigants, and their lack of impartiality affected the outcome of the cases.

This complaint can also be refuted. Mr. Stein felt that, had he gone to civil court, he would have won his case. He also felt his case was worth between \$700,000 and \$800,000.⁸⁹ Yet, his own attorney felt there was a good chance they would have lost in civil court and that Mr. Stein did as well as he would have in another forum.⁹⁰ Furthermore, although Mr. Stein complained that the rabbis bent over backwards for the opposing party, he admitted that, overall, they made every effort to be fair and to reach an equitable decision.⁹¹ Although he complained about the amount of his award, the rabbis ruled in his favor. His inability to collect the judgment was unrelated to the decision of the Bet Din.

Mr. Newman's complaint that the rabbis based their opinion on the law rather than on equity may indeed account for some of his dissatisfaction with the verdict; however, he probably would have gotten the same verdict from a secular court. Furthermore, his claim that a different Bet Din would have rendered a different decision is unjustified. The fact that the rabbis knew both parties did not necessarily seem to have affected their decision.

Another litigant complained that the case was too complex for the Bet Din to understand, yet he admitted that they ruled in his favor. Furthermore, both he and his attorney felt that the rabbis made every effort to be fair and had no ulterior motives in rendering their decision, thus negating any complaints of favoritism or lack of impartiality.

Many litigants were upset that the Bet Din often applied equity rather than strictly applying the law. Many rabbis who sat on the Bet Din felt that equity was a legitimate consideration, especially since so many cases fall into gray areas. Although many litigants believed their cases would have

89. See Interview with George Stein.

90. See Interview with George Williams.

91. See Interview with George Stein.

been decided differently if they had gone to civil court and received what they felt was a strict legal opinion, in the vast majority of cases, these individuals may have either lost their cases in civil court or received a similar decision. Furthermore, it was clear in several of the cases that the formal Bet Din was convened only after attempts to mediate failed, thereby making the Bet Din into an extension of the mediation process. The mediation process involves compromises between the parties in an effort to reach an equitable decision.

Lastly, even if one concedes that by basing their decision on equity sometimes appears unfair to one of the parties, this perceived unfairness still does not account for the depth of dissatisfaction regarding the Bet Din or the seeming contradictions between the belief in the system as a whole and the extreme dissatisfaction with their own experience. The answer thus lies elsewhere.

One may argue that in any adversarial system, including the American civil court system, people are bound to be unhappy with the decision of the court.⁹² Still, the level of dissatisfaction expressed by the litigants who appeared before the Bet Din was far greater than that expressed by these litigants in civil court. Even those who won their cases still seemed unhappy with what had transpired. Furthermore, this strong desire to believe in the system while simultaneously complaining about its practical application was unique to those who had appeared before the Bet Din.

Misplaced expectations were the greatest cause of dissatisfaction in the litigants who used the Bet Din. Most of the individuals who used the Bet Din were deeply religious and chose the Bet Din out of a sense of religious obligation. They felt that, in some way, the decisions rendered by the Bet Din were divinely inspired, or willed by God. Thus, there seems to have been an expectation that the Bet Din would do more than merely render a monetary decision. Rather, the litigants were looking for a moral victory, for some kind of pronouncement that the opposing party had acted immorally and would be punished for such conduct.

Several of the litigants overtly stated that the rabbis should have imposed sanctions on the opposing parties for what they perceived to be immoral behavior. One party threatened the life of an opposing Bet Din participant, and this participant asked the chief rabbi of his Bet Din to impose sanctions for immoral behavior. Instead, the rabbi, who was the participant's religious leader, merely told him that he was only there to decide the monetary issues. Similarly, Mr. Newman wanted a pronouncement that although the opposing party had acted within the letter of the law, the party acted unethically by failing to abide by the spirit of their agreement. When he took his case before the Bet Din, he was deeply unhappy that the rabbis decided

92. In my experience as a trial lawyer in the secular court system, for instance, I often found clients unhappy with various aspects of the process, such as perceiving that their opponents were lying in court or feeling that the amount of the award should have been higher.

the case based on a strict legal interpretation rather than issue a pronouncement that the opposing party had acted unethically.⁹³

Similarly, other Bet Din participants felt the opposing party was never sanctioned or condemned for bringing a fraudulent claim or for committing perjury before the Bet Din. Although the rabbis clearly ruled in favor of these dissatisfied participants, they were quite upset that they had not made a pronouncement against their opponents for what they perceived to have been immoral behavior.

Aside from expecting the Bet Din to pass moral judgment on the opposing parties, the litigants also expected the Bet Din to somehow heal the hurt feelings between the litigants and their opposing parties. Many of these individuals were in partnerships with other Orthodox Jews who had not only been friends of theirs, but had been members of their congregation. These individuals had been, in a sense, members of the same family. When the relationship fell apart, there often seemed to be hurt feelings and feelings of abandonment. Thus, when the litigants felt cheated or betrayed by their former partners, the litigants wanted the Bet Din to somehow heal or smooth over the hurt or angry feelings. These expectations were unrealistic because, as one lawyer put it, many of the cases were “no-win situations” because there was no solution to the problems. Thus, when all the Battei Din could do was render a monetary award, the litigants were deeply unhappy with the outcome.

Similarly, because the litigants before the Bet Din were from the same small community, they expected more from the rabbis sitting on the Bet Din than from judges in a civil court because the rabbis were regarded in one sense as family members. Thus, the litigants placed the rabbis in the role of parental figures who were expected to render a moral judgment rather than merely render a legal decision, as one would expect of a civil judge. These were, after all, people whom the litigants saw frequently in the role of moral leaders, people whose job was to lead them in prayer and remind them of their moral and spiritual obligations. When the Bet Din merely issued a compensatory judgment, the litigants were dissatisfied.

Similarly, the litigants were often members of the same congregation, and there was an expectation that, just as a family member would not cheat another family member, these individuals would deal fairly and ethically with each other. When the litigants perceived that they had been cheated or treated unfairly by people they thought of as family, they were even angrier than if they had had a dispute with a non-family member. There was thus a heightened expectation that the Bet Din, which was also made up of “family members,” would see that justice was fully served.

Lastly, the litigants expected the rabbis to understand and agree with their position rather than merely sit as an impartial decision-making body. Although, in practice, the rabbis could not sympathize with one position to

93. See Interview with Peter Newman.

the exclusion of another, the misplaced expectation may have caused a great deal of dissatisfaction. A study of litigants in small claims court revealed that judges and litigants often have different expectations of the outcome of cases. Three main areas of discord exist between litigants and the legal system: first, litigants often sought intangible benefits from a system that was designed solely to provide economic judgments; second, the litigants may have had a non-economic agenda; and third, the litigants had "unrealistic expectations of the law's authority."⁹⁴ In some cases, although litigants ostensibly won monetary judgments in court, the litigants really desired intangible benefits such as the opportunity to tell their stories to the judge or the satisfaction of an injunction ordering the parties to leave each other alone.⁹⁵

In much the same way, this sense of misplaced expectations seems to have caused a great deal of anguish in the litigants who came before the Bet Din. Although these individuals were sophisticated businessmen who understood the purpose and function of the legal system, misplaced expectations were a source of discord for these individuals when they came before the Bet Din in a way that probably would not have existed if they had litigated in a secular court. Just as litigants in small claims court wanted something from the judges that the legal system was not designed to provide⁹⁶ the litigants before the Bet Din maintained similarly unrealistic expectations of what they could obtain from the rabbis.

Lastly, the disparity between the ideals expressed by the litigants that the Bet Din is a fair and divinely inspired system and the disappointment in the outcome can be explained by examining how cultural representations, or schemas, differ in the kind of motivational force they provide.⁹⁷

A study that examined the motivations of American blue collar workers revealed three different types of cognitive representations, or schemas,⁹⁸ each with different motivational effects.⁹⁹ The first was the "American Dream" schema: with hard work, anyone in America could get ahead. The second schema was that, as a breadwinner, one's primary obligation was to support one's family. The third schema was more personal and idiosyncratic, with variations between individuals that shaped their self-defining goals and behaviors.¹⁰⁰ What distinguished the schemas that were statements of values from those that actually motivated their actions was how the models had become internalized. Although it first appeared that these men had conflicting

94. JOHN M. CONLEY & WILLIAM M. O'BARR, *RULES VERSUS RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE* 126 (1990).

95. *See id.* at 129, 139.

96. *See* CONLEY & O'BARR, *supra* note 94, at 126.

97. *See* Claudia Strauss, *What Makes Tony Run?*, in *HUMAN MOTIVES AND CULTURAL MODELS* 198 (Roy G. D'Andrade & Claudia Strauss eds., 1992).

98. A schema is "a data structure for representing the generic concepts stored in memory." *Id.* at 198.

99. *See id.* at 199.

100. *See id.* at 204-05.

models—one being the American dream to get ahead and the other being the breadwinner to stay at a job in order to support one's family—the American dream model was actually a statement of value, whereas the breadwinner model was a knowledge of reality.¹⁰¹

Similarly, the litigants who appeared before the Bet Din had different cultural models affecting their attitudes and motivations. The cultural model guiding their values and beliefs was that the Bet Din was supposed to be a fair system that was divinely inspired, part of God's greater plan. They continued to believe in this model in spite of evidence showing the system was flawed or failed to meet their needs.

The cultural model based in reality holds that a legal system, whether secular or religious in nature, is supposed to solve problems. When the Bet Din failed to meet this cultural model by failing to solve problems to the litigants' satisfaction, the litigants became disappointed in the Bet Din. However, rather than allow their experiences to contradict their value-laden cultural model that the Bet Din was a better system, they created a dichotomy between their experiences and the Bet Din as an institution. To maintain their belief in the Bet Din's efficacy, they claimed that it was not the system that had failed them but the individual Bet Din. Simply stated, the outcome would have been better had they gone to another Bet Din. Two seemingly conflicting schemas emerged: one representing a cultural value that the Bet Din represented a just and fair system inspired by God and one representing a model of reality that the Bet Din could not resolve their own problems. Yet the dichotomy created by the litigants allowed them to reconcile these schemas without undermining their beliefs and values.

CONCLUSION

The Bet Din has existed as an institution for thousands of years. Though it has changed over time and from one country to another, it remains an important part of the Orthodox Jewish community's ability to maintain itself and its traditions. Precisely because of its history and its ties to tradition, the Orthodox community uses and supports the Bet Din, allowing it to continue as an institution. The fact that its laws date back to ancient times and cover minute procedural details heightens the importance of the Bet Din to Orthodox Jews, whose central beliefs revolve around rituals and traditions set forth in the law and followed for thousands of years. Their need to follow their laws and traditions, their sense of religious obligation, is the primary reason why many individuals use the Bet Din to resolve disputes between each other.

The second reason people use the Bet Din is the importance of maintaining a sense of community, of viewing each other as an extended family, which manifests itself in their acquiescence to social pressure to use the Bet

101. *See id.* at 205-08.

Din. This pressure flows from extensive religious laws requiring Orthodox Jews to use their own courts to resolve disputes among themselves. Religious laws strictly prohibit using the courts of those they consider "outsiders," even to the point of trying to keep the outside world from learning that problems or disputes exist between them.

These two values both draw Orthodox Jews to use the Bet Din and cause them extreme dissatisfaction with the Bet Din. Both religious obligation and social pressure from their community draw them to the Bet Din. However, this also creates a sense of misplaced expectations, which can lead to great dissatisfaction. They expect the Bet Din to do more than merely issue legal rulings; they look to the rabbis to solve their problems in a way that they would not expect from secular courts. Furthermore, there is an expectation that the rabbis will pronounce moral judgments, imposing sanctions on the litigants who behave immorally or unethically toward another member of the same "family" in much the same way as a parent would be expected to do.

To resolve this conflict between believing in the Bet Din as an institution and dissatisfaction with the outcome, the litigants create two cultural models: one model that continues to maintain their values and beliefs in the institution and another model that criticizes their own cases. This allows them to maintain their sense of value in the institution while simultaneously expressing dissatisfaction with the process. As a result, the litigants continue to be both drawn to the Bet Din, yet dissatisfied with the results. In a very real sense, they both follow God's mandate to use the bet-din and expect God-like results from it.